



Federal Court of Australia  
District Registry: New South Wales  
Division: General

No. NSD1908/2016  
NSD1155/2017  
NSD1388/2018  
  
No. NSD1908/2016

**GAVIN SMITH** and others named in the schedule  
Applicants

**COMMONWEALTH OF AUSTRALIA**  
Respondent

No. NSD1155/2017

**BRADLEY JAMES HUDSON** and others named in the schedule  
Applicants

**COMMONWEALTH OF AUSTRALIA**  
Respondent

No. NSD1388/2018

**KIRSTY BARTLETT** and another named in the schedule  
Applicants

**COMMONWEALTH OF AUSTRALIA**  
Respondent

## **ORDERS**

**JUDGE:** JUSTICE LEE  
**DATE OF ORDER:** 2 October 2019  
**WHERE MADE:** Sydney

### **THE COURT ORDERS THAT:**

#### **Hudson Proceeding**

1. The applicants provide final particulars of knowledge by 4.00pm on 15 November 2019.



2. The applicants' Interlocutory Application of 24 April 2019 be dismissed.

### **Bartlett Proceeding**

3. The applicants provide final particulars of knowledge by 4.00pm on 15 November 2019.
4. Pursuant to s 33J(3) of the *Federal Court of Australia Act 1976* (Cth) (**Act**), an order that the opt-out date of 19 July 2019 in order 5 of the orders made on 23 April 2019 be extended to 27 September 2019 for the group members listed in **Schedule 4**.
5. Pursuant to s 33ZF of the Act and r 1.32 of the *Federal Court Rules 2011* (**FCR**), an order that the group members listed in **Schedule 4** be taken to have opted-out of this proceeding.

### **Smith Proceeding**

6. The applicants be granted leave to file and serve the fourth further amended statement of claim (**4FASOC**) by 4.00pm on 4 October 2019.
7. The applicants pay the respondent's costs thrown away by the amendments made in the 4FASOC.
8. Any additional group member who is included in the description of the group by reason of the amendment in the 4FASOC is not to have the benefit of having their rights relate back to the date of the original filing of the proceeding.
9. The respondent be granted leave to file and serve a defence to the 4FASOC by 4.00pm on 28 November 2019.

### **Smith, Hudson and Bartlett Proceedings**

#### ***Hearing dates***

10. The matters be listed for a case management hearing at 10.15am on 25 October 2019.
11. The hearing dates listed in order 7 of the orders made on 6 May 2019 for hearing for the adoption of any referee reports be vacated.

#### ***Interrogatories***

12. Any application for leave to administer interrogatories be made returnable at 10.15am on 25 October 2019.

#### ***Mediation***

13. The parties to commence a mediation before the Hon. Peter Jacobson QC by 10 December 2019.

#### ***Definitions***



14. In these orders:
  - (a) **Initial Trial** has the meaning defined in order 2 of the orders made on 24 September 2019;
  - (b) **Initial Trial Applicants** has the meaning defined in order 2 of the orders made on 24 September 2019;
  - (c) **First Stage Hearing** has the meaning defined in order 3 of the orders made on 24 September 2019; and
  - (d) **Second Stage Hearing** has the meaning defined in order 3 of the orders made on 24 September 2019.

#### *Common Questions and First Stage Hearing Questions*

15. By 16 October 2019, the parties' counsel are to confer in relation to the questions of fact or law common to the claims of the Initial Trial Applicants and the group members in each of the Smith, Hudson and Bartlett Proceedings (**Common Questions**) and the questions to be heard and determined during the First Stage Hearing (**First Stage Hearing Questions**).
16. By 4.00pm on 21 October 2019, the parties are to file and serve agreed orders setting out the Common Questions and the First Stage Hearing Questions.
17. Where the parties are unable to reach agreement in relation to the Common Questions and the First Stage Questions, the parties are to provide, by 12.00pm on 24 October 2019, submissions regarding each parties' proposed Common Questions and First Stage Questions as to the extent of the disagreement.

#### *References*

##### *Referees*

18. Pursuant to ss 33ZF, 37P(2) and 54A of the Act, the following persons are appointed as referees in the following disciplines:
  - (a) **Epidemiology/Toxicology**: Dr Nicholas Osborne
  - (b) **Land Valuation**: Professor Chris Eves
  - (c) **Hydrology**: Dr John Macintosh
  - (d) **Hydrogeology**: Professor Adrian Werner

##### *Questions and directions for Epidemiology/Toxicology Reference*

19. Prior to and for the purposes of the First Stage Hearing, pursuant to ss 33ZF, 37P(2) and 54A of the Act and FCR 5.04 and FCR 28.61, the questions set out in **Schedule 1** to these orders be referred to the Epidemiology/Toxicology Referee for the purposes



of the Epidemiology/Toxicology Referee conducting an inquiry and making a report in writing to the Court stating, with reasons, the Epidemiology/Toxicology Referee's opinion on those questions (the **Epidemiology/Toxicology Report**).

20. Pursuant to ss 33ZF, 37P(2) and 54A(1) of the Act and FCR 5.04 and FCR 28.65:
  - (a) the Epidemiology/Toxicology Reference shall commence by 14 October 2019 or on such other later date as ordered by the Epidemiology/Toxicology Referee; and
  - (b) the Epidemiology/Toxicology Reference shall be conducted in accordance with the General Procedures on Reference, set out in **Schedule 3** to these orders.
21. Ms Aditi Rao is appointed as counsel assisting the Epidemiology/Toxicology Referee.
22. The Epidemiology/Toxicology Referee is to submit the Epidemiology/Toxicology Report to the Court in accordance with FCR 28.66 addressed to the District Registrar, on or before 18 December 2019.
23. Any application on the Epidemiology/Toxicology Report be made returnable at 9.30am on 30 January 2020.
24. Any submissions in support of or in opposition to any application in relation to the Epidemiology/Toxicology Report to be filed and served by 12.00pm on 29 January 2020.

*Questions and directions for Land Valuation Reference*

25. Pursuant to ss 33ZF, 37P(2) and 54A(1) of the Act and FCR 5.04 and FCR 28.61, the questions set out in **Schedule 2** to these orders be referred to the Land Valuation Referee for the purposes of the Land Valuation Referee conducting an inquiry and making a report in writing to the Court stating, with reasons, the Land Valuation Referee's opinion on those questions (the **Land Valuation Report**).
26. Pursuant to ss 33ZF, 37P(2) and 54A(1) of the Act and FCR 5.04 and FCR 28.65:
  - (a) the Land Valuation Reference shall commence by 14 October 2019 or on such other later date as ordered by the Land Valuation Referee; and
  - (b) the Land Valuation Reference shall be conducted in accordance with the General Procedures on Reference, set out in **Schedule 3** to these orders.
27. Mr Dion Fahey, barrister, is appointed as counsel assisting the Land Valuation Referee.
28. The Land Valuation Referee is to submit the Land Valuation Report to the Court in accordance with FCR 28.66 addressed to the District Registrar, on or before 18 December 2019.

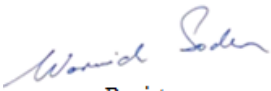


29. Any application on the Land Valuation Report be made returnable at 9.30am on 30 January 2020.
30. Any submissions in support of or in opposition to any application in relation to the Land Valuation Report to be filed and served by 12pm on 29 January 2020.

*Second Stage Hearing References*

31. Prior to and for the purposes of the Second Stage Hearing pursuant to ss 33ZF, 37P(2) and 54A(1) of the Act and FCR 5.04 and FCR 28.61, there shall be a reference to:
  - (a) the Hydrology Referee for the purposes of conducting an inquiry (**Hydrology Reference**);
  - (b) the Hydrogeology Referee for the purposes of conducting an inquiry (**Hydrogeology Reference**); and
  - (c) a referee to be appointed in relation to the discipline of remediation for the purposes of conducting an inquiry (**Remediation Reference**).
32. At the time the Court delivers reasons in relation to the questions the subject of the First Stage Hearing, the Court will make further directions pursuant to ss 33ZF, 37P(2) and 54A(1) of the Act and FCR 5.04 and FCR 28.65, in relation to the conduct and timing of:
  - (a) the Hydrology Reference;
  - (b) the Hydrogeology Reference; and
  - (c) the Remediation Reference.

Date that entry is stamped: 2 October 2019

  
Registrar



**Schedule**

No: NSD1908/2016

Federal Court of Australia  
District Registry: New South Wales  
Division: General

Second Applicant	KIM SMITH
Third Applicant	ANN AND LINDSAY CLOUT SMSF PTY LTD ACN 154 516 006
Fourth Applicant	ANN CLOUT
Fifth Applicant	LINDSAY CLOUT
Sixth Applicant	JOHN ARTHUR HEWITT
Eighth Applicant	MARSHALLS TRANSPORT PTY LTD
Ninth Applicant	NICHOLAS MARSHALL
Tenth Applicant	MELISSA MARSHALL

No: NSD1155/2017

Federal Court of Australia  
District Registry: New South Wales  
Division: General

Second Applicant	SHARYN DANELLE HUDSON
Third Applicant	MEATIES PTY LTD (ACN 113 651 755) AS TRUSTEE FOR THE BSTS UNIT TRUST
Interested Person	BANK OF QUEENSLAND



No: NSD1388/2018

Federal Court of Australia  
District Registry: New South Wales  
Division: General

Second Applicant          ANTHONY CRAIG BARTLETT



## **SCHEDULE 1**

### **TOXICOLOGY/EPIDEMIOLOGY**

1. Is 3M AFFF causative or potentially causative of adverse human health effects?
2. If 3M AFFF is causative or potentially causative of adverse human health effects, how has the state of knowledge in the scientific community developed during the period from 1976 to date in relation to the potential for 3M AFFF to cause adverse human health effects?





## SCHEDULE 2

### LAND VALUATION

1. In the Williamtown PFAS Class Action:
  - a. what was the market value of the property known as 2565 Nelson Bay Road, Salt Ash (**Smith Property**) as at 2 September 2015;
  - b. what is the current market value of the Smith Property; and
  - c. what is the current market value of the Smith Property assuming that the contamination resulting from the historical use of AFFF at the Williamtown RAAF Base did not exist (and had not been announced on 3 September 2015 or otherwise)?
  
2. In the Oakey PFAS Class Action:
  - a. what was the market value of the property known as 14 Walkers Lane, Oakey, Queensland (**Hudson Property**) as at 28 July 2014;
  - b. what is the current market value of the Hudson Property; and
  - c. what is the current market value of the Hudson Property assuming that the contamination resulting from the historical use of AFFF at Army Aviation Centre Oakey did not exist (and had not been announced on 29 July 2014 or otherwise)?
  
3. In the Katherine PFAS Class Action:
  - a. what was the market value of the property known as 245 Collins Street, Uralla, Northern Territory (**Bartlett Property**) as at 22 November 2016;
  - b. what is the current market value of the Bartlett Property; and
  - c. what is the current market value of the Bartlett Property assuming that the contamination resulting from the historical use of AFFF at Tindal RAAF Base did not exist (and had not been announced on 23 November 2016 or otherwise)?



### SCHEDULE 3

#### GENERAL PROCEDURES ON REFERENCE

1. Orders 2 to 14 below provide general directions for the purposes of facilitating references ordered by the Court in the PFAS Class Actions (collectively, the **References**) and are subject to any more specific orders made by the Court in relation to any of the References (whether in these orders or hereafter).
2. Each referee appointed by the Court (collectively, the **Referees**) individually is to consider and implement such manner of conducting each of the References as will, without undue formality or delay, enable a just, efficient, timely and cost-effective resolution of each of the References to allow completion of their report.
3. Without limiting the generality of order 2, in order to facilitate each Referee implementing the just, efficient, timely and cost-effective resolution of the relevant reference, each Referee is to make such directions as the Referee considers appropriate as to the conduct of the Reference.
4. Without limiting the generality of orders 2 and 3, each Referee may, to the extent that he considers appropriate:
  - a. make enquiries by telephone or in writing;
  - b. have direct communication, without intervention of lawyers, with any expert retained on behalf of a party and/or any person who the Referee believes may have information relevant to the Reference;
  - c. make any direction the Referee considers appropriate in relation to the making of submissions by any party, including that any submissions be provided wholly in writing and be limited in length and topic;
  - d. make directions for the attendance of any person, and/or the production of



documents, be compelled by subpoena.

5. To assist the Referees in the preparation of their reports, to the extent the Court considers it appropriate or necessary to do so a barrister may be appointed as counsel assisting (**Counsel Assisting**) any Referee and the costs of such barrister, capped at such sum as the Court specifies (subject to further order), shall be costs in the References and dealt with in the same way as the fees of the Referees.
6. Without limiting the generality of orders 2, 3, and 4, to the extent it is necessary for a Referee to make any findings of fact in order to express an opinion, any material other than expert opinion before the Referee shall, unless the Referee otherwise directs, be by way of:
  - a. any statement of agreed facts;
  - b. a compendium of facts and documents provided to the Referee by a party in accordance with any directions made by the Referee; and/or
  - c. a written statement signed by the maker of the statement provided to the Referee by a party in accordance with any directions made by the Referee (but only in the event the Referee considers it necessary or appropriate to receive any statement relevant to any contested fact).
7. Each party must, before the time fixed by the Referee conducting the reference, give a brief statement of the findings of fact and law contended by the party in accordance with FCR 28.65(7) to Counsel Assisting (or in their absence, directly to the Referee any provide a copy to any other party to the inquiry).
8. Subject to order 7 above, the parties are to participate in the References without the involvement of legal representatives (except to the extent any Referee wishes to obtain the assistance of any lawyer) and the laws of evidence will not apply in relation to the References.
9. Each Referee, in their reports:
  - a. shall, to the extent it was necessary for the Referee to make any findings



of fact in order to express his or her opinion, make a statement of the facts found by the Referee from which, following any adoption, the Court may draw such inferences as it thinks fit; and/or

- b. may submit any question arising on the Reference relevant to that Referee for the decision of the Court and provide alternative opinions which depend upon how the Court determines any questions submitted to the Court.
10. Subject to further direction by the Referee, the parties are to deliver to each Counsel Assisting (or in their absence, directly to the Referee) forthwith one copy of these orders, together with a copy of FCR 28 and a copy of the pleadings and expert evidence relevant to the reference.
11. Any amendments to the questions the subject of the References, whether by agreement or on a contested basis, are to be the subject of an order made by the Court.
12. If for any reason a Referee is unable to comply with the order for delivery of their report to the Court by the date in this order, the Referee is to notify the Associate to Justice Lee (as soon as practicable after that reason becomes apparent) with a brief statement of the reasons for such inability and providing an indication of the further time within which is required to deliver the report to the Court.
13. Each Referee and Counsel Assisting have leave to contact the Associate to Justice Lee to obtain directions with respect to any matter arising in relation to the reference.
14. Without affecting the powers of the Court as to costs, the parties are to be jointly and severally liable to each Referee for the fees payable to him.



**SCHEDULE 4**

**LIST OF GROUP MEMBERS TAKEN TO HAVE OPTED OUT**

<b>No.</b>	<b>Name</b>	<b>Stamped by registry</b>	<b>Date on Opt Out Notice</b>
1.	Cassie Lamb	24-Jul-19	16-Jul-19
2.	Brian and Shirley Canning	24-Jul-19	18-Jul-19
3.	C J Beane	24-Jul-19	17-Jul-19
3A.	R J Beane	24-Jul-19	17-Jul-19
4.	Defence Housing Australia	23-Jul-19	19-Jul-19
4A.	Defence Housing Australia	26-Jul-19	19-Jul-19
5.	Neil Bertram and Wendy Robinson	25-Jul-19	16-Jul-19
6.	R and K Super Company	25-Jul-19	14-Jul-19
7.	Allison Ross	2-Aug-19	16-Jul-19
8.	M and A NT Superfund Plc	2-Aug-19	16-Jul-19
9.	Scott Andrew and Joanna Holden	12-Aug-19	2-Aug-19
10.	Peter Skonis	-	19-Jul-19
11.	Viva Energy Australia	-	17-Jul-19
12.	Danielle Livesey	-	15-Jul-19
13.	Gorman Superannuation Fund c/- Lynette Gorman	-	15-Jul-19
14.	Riverside Falls Pty Ltd c/- Gregory Gorman	-	15-Jul-19
15.	David Bursle	-	13-Jul-19
16.	T and R Avenell	-	16-Jul-19
17.	Carol Payne	-	28-Jun-19
18.	Louise Ellen Payne	-	28-Jun-19
19.	Glen Seymour	-	17-May-19
20.	Georgia Gunson	-	18-Jul-19
21.	K Horan	-	18-Jul-19
22.	Rachel Hull	-	18-Jul-19
23.	Robert Cavanagh	-	18-Jul-19
24.	Brett Hughes and Kerri Hughes	-	16-Jul-19
25.	Glenn Hughes	-	16-Jul-19
26.	Jarred Hughes, Brett Hughes and Kerri Hughes	-	16-Jul-19
27.	J Duggan	-	12-Jul-19
28.	Tania McFadden	-	4-Jul-19
29.	Garth McLachlan	-	3-Jul-19
29A.	Renee McLachlan	-	3-Jul-19
30.	Katherine Motor Sports Club	-	30-Jun-19



31.	Veronica Elliott and Lindsay Elliott	-	21-Jun-19
32.	John Jones	-	19-Jun-19
33.	JV & NS King trading as the King Family Trust	-	11-Jun-19
33A.	James Vincent King and Maureen Sharon King	-	11-Jun-19
34.	D H Page and P M Aspey	-	1-Jun-19
35.	Jenifer Mackie and Wayne Andrew Quill	-	23-May-19